

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 4600  
OFFERED BY MR. GREENWOOD**

Strike all after the enacting clause and insert the  
following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Help Efficient, Acces-  
3 sible, Low Cost, Timely Health Care (HEALTH) Act of  
4 2002”.

**5 SEC. 2. FINDINGS AND PURPOSE.**

6       (a) FINDINGS.—

7           (1) EFFECT ON HEALTH CARE ACCESS AND  
8 COSTS.—Congress finds that our current civil justice  
9 system is adversely affecting patient access to health  
10 care services, better patient care, and cost-efficient  
11 health care, in that the health care liability system  
12 is a costly and ineffective mechanism for resolving  
13 claims of health care liability and compensating in-  
14 jured patients, and is a deterrent to the sharing of  
15 information among health care professionals which  
16 impedes efforts to improve patient safety and quality  
17 of care.

18           (2) EFFECT ON INTERSTATE COMMERCE.—  
19 Congress finds that the health care and insurance

1 industries are industries affecting interstate com-  
2 merce and the health care liability litigation systems  
3 existing throughout the United States are activities  
4 that affect interstate commerce by contributing to  
5 the high costs of health care and premiums for  
6 health care liability insurance purchased by health  
7 care system providers.

8 (3) EFFECT ON FEDERAL SPENDING.—Con-  
9 gress finds that the health care liability litigation  
10 systems existing throughout the United States have  
11 a significant effect on the amount, distribution, and  
12 use of Federal funds because of—

13 (A) the large number of individuals who  
14 receive health care benefits under programs op-  
15 erated or financed by the Federal Government;

16 (B) the large number of individuals who  
17 benefit because of the exclusion from Federal  
18 taxes of the amounts spent to provide them  
19 with health insurance benefits; and

20 (C) the large number of health care pro-  
21 viders who provide items or services for which  
22 the Federal Government makes payments.

23 (b) PURPOSE.—It is the purpose of this Act to imple-  
24 ment reasonable, comprehensive, and effective health care  
25 liability reforms designed to—

1 (1) improve the availability of health care serv-  
2 ices in cases in which health care liability actions  
3 have been shown to be a factor in the decreased  
4 availability of services;

5 (2) reduce the incidence of “defensive medi-  
6 cine” and lower the cost of health care liability in-  
7 surance, all of which contribute to the escalation of  
8 health care costs;

9 (3) ensure that persons with meritorious health  
10 care injury claims receive fair and adequate com-  
11 pensation, including reasonable noneconomic dam-  
12 ages;

13 (4) improve the fairness and cost-effectiveness  
14 of our current health care liability system to resolve  
15 disputes over, and provide compensation for, health  
16 care liability by reducing uncertainty in the amount  
17 of compensation provided to injured individuals;

18 (5) provide an increased sharing of information  
19 in the health care system which will reduce unin-  
20 tended injury and improve patient care.

21 **SEC. 3. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

22 The time for the commencement of a health care law-  
23 suit shall be 3 years after the date of injury or 1 year  
24 after the claimant discovers, or through the use of reason-  
25 able diligence should have discovered, the injury, which-

1 ever occurs first. In no event shall the time for commence-  
2 ment of a health care lawsuit exceed 3 years unless tolled  
3 for any of the following:

4 (1) Upon proof of fraud;

5 (2) Intentional concealment; or

6 (3) The presence of a foreign body, which has  
7 no therapeutic or diagnostic purpose or effect, in the  
8 person of the injured person.

9 Actions by a minor shall be commenced within 3 years  
10 from the date of the alleged injury except that actions by  
11 a minor under the full age of 6 years shall be commenced  
12 within 3 years or prior to the minor's 8th birthday, which-  
13 ever provides a longer period. Such time limitation shall  
14 be tolled for minors for any period during which a parent  
15 or guardian and a health care provider or health care or-  
16 ganization have committed fraud or collusion in the failure  
17 to bring an action on behalf of the injured minor.

18 **SEC. 4. COMPENSATING PATIENT INJURY.**

19 (a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL  
20 ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any  
21 health care lawsuit, the full amount of a claimant's eco-  
22 nomic loss may be fully recovered without limitation.

23 (b) ADDITIONAL NONECONOMIC DAMAGES.—In any  
24 health care lawsuit, the amount of noneconomic damages  
25 recovered may be as much as \$250,000, regardless of the

1 number of parties against whom the action is brought or  
2 the number of separate claims or actions brought with re-  
3 spect to the same occurrence.

4 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC  
5 DAMAGES.—In any health care lawsuit, an award for fu-  
6 ture noneconomic damages shall not be discounted to  
7 present value. The jury shall not be informed about the  
8 maximum award for noneconomic damages. An award for  
9 noneconomic damages in excess of \$250,000 shall be re-  
10 duced either before the entry of judgment, or by amend-  
11 ment of the judgment after entry of judgment, and such  
12 reduction shall be made before accounting for any other  
13 reduction in damages required by law. If separate awards  
14 are rendered for past and future noneconomic damages  
15 and the combined awards exceed \$250,000, the future  
16 noneconomic damages shall be reduced first.

17 (d) FAIR SHARE RULE.—In any health care lawsuit,  
18 each party shall be liable for that party's several share  
19 of any damages only and not for the share of any other  
20 person. Each party shall be liable only for the amount of  
21 damages allocated to such party in direct proportion to  
22 such party's percentage of responsibility. A separate judg-  
23 ment shall be rendered against each such party for the  
24 amount allocated to such party. For purposes of this sec-

1 tion, the trier of fact shall determine the proportion of  
2 responsibility of each party for the claimant's harm.

3 **SEC. 5. MAXIMIZING PATIENT RECOVERY.**

4 (a) COURT SUPERVISION OF SHARE OF DAMAGES  
5 ACTUALLY PAID TO CLAIMANTS.—In any health care law-  
6 suit, the court shall supervise the arrangements for pay-  
7 ment of damages to protect against conflicts of interest  
8 that may have the effect of reducing the amount of dam-  
9 ages awarded that are actually paid to claimants. In par-  
10 ticular, in any health care lawsuit in which the attorney  
11 for a party claims a financial stake in the outcome by vir-  
12 tue of a contingent fee, the court shall have the power  
13 to restrict the payment of a claimant's damage recovery  
14 to such attorney, and to redirect such damages to the  
15 claimant based upon the interests of justice and principles  
16 of equity. In no event shall the total of all contingent fees  
17 for representing all claimants in a health care lawsuit ex-  
18 ceed the following limits:

19 (1) 40 percent of the first \$50,000 recovered by  
20 the claimant(s).

21 (2)  $33\frac{1}{3}$  percent of the next \$50,000 recovered  
22 by the claimant(s).

23 (3) 25 percent of the next \$500,000 recovered  
24 by the claimant(s).

1           (4) 15 percent of any amount by which the re-  
2       covery by the claimant(s) is in excess of \$600,000.

3       (b) APPLICABILITY.—The limitations in this section  
4       shall apply whether the recovery is by judgment, settle-  
5       ment, mediation, arbitration, or any other form of alter-  
6       native dispute resolution. In a health care lawsuit involv-  
7       ing a minor or incompetent person, a court retains the  
8       authority to authorize or approve a fee that is less than  
9       the maximum permitted under this section.

10   **SEC. 6. ADDITIONAL HEALTH BENEFITS.**

11       In any health care lawsuit, any party may introduce  
12       evidence of collateral source benefits. If a party elects to  
13       introduce such evidence, any opposing party may intro-  
14       duce evidence of any amount paid or contributed or rea-  
15       sonably likely to be paid or contributed in the future by  
16       or on behalf of the opposing party to secure the right to  
17       such collateral source benefits. No provider of collateral  
18       source benefits shall recover any amount against the  
19       claimant or receive any lien or credit against the claim-  
20       ant's recovery or be equitably or legally subrogated to the  
21       right of the claimant in a health care lawsuit. This section  
22       shall apply to any health care lawsuit that is settled as  
23       well as a health care lawsuit that is resolved by a fact  
24       finder.

1   **SEC. 7. PUNITIVE DAMAGES.**

2           (a) IN GENERAL.—Punitive damages may, if other-  
3 wise permitted by applicable State or Federal law, be  
4 awarded against any person in a health care lawsuit only  
5 if it is proven by clear and convincing evidence that such  
6 person acted with malicious intent to injure the claimant,  
7 or that such person deliberately failed to avoid unneces-  
8 sary injury that such person knew the claimant was sub-  
9 stantially certain to suffer. In any health care lawsuit  
10 where no judgment for compensatory damages is rendered  
11 against such person, no punitive damages may be awarded  
12 with respect to the claim in such lawsuit. No demand for  
13 punitive damages shall be included in a health care lawsuit  
14 as initially filed. A court may allow a claimant to file an  
15 amended pleading for punitive damages only upon a mo-  
16 tion by the claimant and after a finding by the court, upon  
17 review of supporting and opposing affidavits or after a  
18 hearing, after weighing the evidence, that the claimant has  
19 established by a substantial probability that the claimant  
20 will prevail on the claim for punitive damages. At the re-  
21 quest of any party in a health care lawsuit, the trier of  
22 fact shall consider in a separate proceeding—

23           (1) whether punitive damages are to be award-  
24 ed and the amount of such award; and

25           (2) the amount of punitive damages following a  
26 determination of punitive liability.



1 If a separate proceeding is requested, evidence relevant  
2 only to the claim for punitive damages, as determined by  
3 applicable State law, shall be inadmissible in any pro-  
4 ceeding to determine whether compensatory damages are  
5 to be awarded.

6 (b) DETERMINING AMOUNT OF PUNITIVE DAM-  
7 AGES.—

8 (1) FACTORS CONSIDERED.—In determining  
9 the amount of punitive damages, the trier of fact  
10 shall consider only the following:

11 (A) the severity of the harm caused by the  
12 conduct of such party;

13 (B) the duration of the conduct or any  
14 concealment of it by such party;

15 (C) the profitability of the conduct to such  
16 party;

17 (D) the number of products sold or med-  
18 ical procedures rendered for compensation, as  
19 the case may be, by such party, of the kind  
20 causing the harm complained of by the claim-  
21 ant;

22 (E) any criminal penalties imposed on such  
23 party, as a result of the conduct complained of  
24 by the claimant; and

1 (F) the amount of any civil fines assessed  
2 against such party as a result of the conduct  
3 complained of by the claimant.

4 (2) MAXIMUM AWARD.—The amount of punitive  
5 damages awarded in a health care lawsuit may be up  
6 to as much as two times the amount of economic  
7 damages awarded or \$250,000, whichever is greater.  
8 The jury shall not be informed of this limitation.

9 (c) NO CIVIL MONETARY PENALTIES FOR PRODUCTS  
10 THAT COMPLY WITH FDA STANDARDS.—

11 (1) IN GENERAL.—No punitive damages may be  
12 awarded against the manufacturer or distributor of  
13 a medical product based on a claim that such prod-  
14 uct caused the claimant's harm where—

15 (A)(i) such medical product was subject to  
16 premarket approval or clearance by the Food  
17 and Drug Administration with respect to the  
18 safety of the formulation or performance of the  
19 aspect of such medical product which caused  
20 the claimant's harm or the adequacy of the  
21 packaging or labeling of such medical product;  
22 and

23 (ii) such medical product was so approved  
24 or cleared; or

1 (B) such medical product is generally rec-  
2 ognized among qualified experts as safe and ef-  
3 fective pursuant to conditions established by the  
4 Food and Drug Administration and applicable  
5 Food and Drug Administration regulations, in-  
6 cluding without limitation those related to pack-  
7 aging and labeling.

8 (2) LIABILITY OF HEALTH CARE PROVIDERS.—

9 A health care provider who prescribes a drug or de-  
10 vice (including blood products) approved by the  
11 Food and Drug Administration shall not be named  
12 as a party to a product liability lawsuit involving  
13 such drug or device and shall not be liable to a  
14 claimant in a class action lawsuit against the manu-  
15 facturer, distributor, or product seller of such drug  
16 or device.

17 (3) PACKAGING.—In a health care lawsuit for  
18 harm which is alleged to relate to the adequacy of  
19 the packaging or labeling of a drug which is required  
20 to have tamper-resistant packaging under regula-  
21 tions of the Secretary of Health and Human Serv-  
22 ices (including labeling regulations related to such  
23 packaging), the manufacturer or product seller of  
24 the drug shall not be held liable for punitive dam-  
25 ages unless such packaging or labeling is found by

1 the trier of fact by clear and convincing evidence to  
2 be substantially out of compliance with such regula-  
3 tions.

4 (4) EXCEPTION.—Paragraph (1) shall not  
5 apply in any health care lawsuit in which—

6 (A) a person, before or after premarket ap-  
7 proval or clearance of such medical product,  
8 knowingly misrepresented to or withheld from  
9 the Food and Drug Administration information  
10 that is required to be submitted under the Fed-  
11 eral Food, Drug, and Cosmetic Act (21 U.S.C.  
12 301 et seq.) or section 351 of the Public Health  
13 Service Act (42 U.S.C. 262) that is material  
14 and is causally related to the harm which the  
15 claimant allegedly suffered; or

16 (B) a person made an illegal payment to  
17 an official of the Food and Drug Administra-  
18 tion for the purpose of either securing or main-  
19 taining approval or clearance of such medical  
20 product.

21 **SEC. 8. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**  
22 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**  
23 **SUITS.**

24 (a) IN GENERAL.—In any health care lawsuit, if an  
25 award of future damages, without reduction to present

1 value, equaling or exceeding \$50,000 is made against a  
2 party with sufficient insurance or other assets to fund a  
3 periodic payment of such a judgment, the court shall, at  
4 the request of any party, enter a judgment ordering that  
5 the future damages be paid by periodic payments in ac-  
6 cordance with the Uniform Periodic Payment of Judg-  
7 ments Act promulgated by the National Conference of  
8 Commissioners on Uniform State Laws.

9 (b) **APPLICABILITY.**—This section applies to all ac-  
10 tions which have not been first set for trial or retrial be-  
11 fore the effective date of this Act.

12 **SEC. 9. DEFINITIONS.**

13 In this Act:

14 (1) **ALTERNATIVE DISPUTE RESOLUTION SYS-**  
15 **TEM; ADR.**—The term “alternative dispute resolution  
16 system” or “ADR” means a system that provides  
17 for the resolution of health care lawsuits in a man-  
18 ner other than through a civil action brought in a  
19 State or Federal court.

20 (2) **CLAIMANT.**—The term “claimant” means  
21 any person who brings a health care lawsuit, includ-  
22 ing a person who asserts or claims a right to legal  
23 or equitable contribution, indemnity or subrogation,  
24 arising out of a health care liability claim or action,  
25 and any person on whose behalf such a claim is as-

1       serted or such an action is brought, whether de-  
2       ceased, incompetent, or a minor.

3           (3) COLLATERAL SOURCE BENEFITS.—The  
4       term “collateral source benefits” means any amount  
5       paid or reasonably likely to be paid in the future to  
6       or on behalf of the claimant, or any service, product  
7       or other benefit provided or reasonably likely to be  
8       provided in the future to or on behalf of the claim-  
9       ant, as a result of the injury or wrongful death, pur-  
10      suant to—

11           (A) any State or Federal health, sickness,  
12       income-disability, accident, or workers’ com-  
13       pensation law;

14           (B) any health, sickness, income-disability,  
15       or accident insurance that provides health bene-  
16       fits or income-disability coverage;

17           (C) any contract or agreement of any  
18       group, organization, partnership, or corporation  
19       to provide, pay for, or reimburse the cost of  
20       medical, hospital, dental, or income disability  
21       benefits; and

22           (D) any other publicly or privately funded  
23       program.

24           (4) COMPENSATORY DAMAGES.—The term  
25       “compensatory damages” means objectively verifi-

1       able monetary losses incurred as a result of the pro-  
2       vision of, use of, or payment for (or failure to pro-  
3       vide, use, or pay for) health care services or medical  
4       products, such as past and future medical expenses,  
5       loss of past and future earnings, cost of obtaining  
6       domestic services, loss of employment, and loss of  
7       business or employment opportunities, damages for  
8       physical and emotional pain, suffering, inconven-  
9       ience, physical impairment, mental anguish, dis-  
10      figurement, loss of enjoyment of life, loss of society  
11      and companionship, loss of consortium (other than  
12      loss of domestic service), hedonic damages, injury to  
13      reputation, and all other nonpecuniary losses of any  
14      kind or nature. The term “compensatory damages”  
15      includes economic damages and noneconomic dam-  
16      ages, as such terms are defined in this section.

17           (5) CONTINGENT FEE.—The term “contingent  
18      fee” includes all compensation to any person or per-  
19      sons which is payable only if a recovery is effected  
20      on behalf of one or more claimants.

21           (6) ECONOMIC DAMAGES.—The term “economic  
22      damages” means objectively verifiable monetary  
23      losses incurred as a result of the provision of, use  
24      of, or payment for (or failure to provide, use, or pay  
25      for) health care services or medical products, such as

1 past and future medical expenses, loss of past and  
2 future earnings, cost of obtaining domestic services,  
3 loss of employment, and loss of business or employ-  
4 ment opportunities.

5 (7) HEALTH CARE LAWSUIT.—The term  
6 “health care lawsuit” means any health care liability  
7 claim concerning the provision of health care goods  
8 or services affecting interstate commerce, or any  
9 health care liability action concerning the provision  
10 of health care goods or services affecting interstate  
11 commerce, brought in a State or Federal court or  
12 pursuant to an alternative dispute resolution system,  
13 against a health care provider, a health care organi-  
14 zation, or the manufacturer, distributor, supplier,  
15 marketer, promoter, or seller of a medical product,  
16 regardless of the theory of liability on which the  
17 claim is based, or the number of claimants, plain-  
18 tiffs, defendants, or other parties, or the number of  
19 claims or causes of action, in which the claimant al-  
20 leges a health care liability claim.

21 (8) HEALTH CARE LIABILITY ACTION.—The  
22 term “health care liability action” means a civil ac-  
23 tion brought in a State or Federal Court or pursu-  
24 ant to an alternative dispute resolution system,  
25 against a health care provider, a health care organi-



1        zation, or the manufacturer, distributor, supplier,  
2        marketer, promoter, or seller of a medical product,  
3        regardless of the theory of liability on which the  
4        claim is based, or the number of plaintiffs, defend-  
5        ants, or other parties, or the number of causes of ac-  
6        tion, in which the claimant alleges a health care li-  
7        ability claim.

8            (9) HEALTH CARE LIABILITY CLAIM.—The  
9        term “health care liability claim” means a demand  
10       by any person, whether or not pursuant to ADR,  
11       against a health care provider, health care organiza-  
12       tion, or the manufacturer, distributor, supplier, mar-  
13       keter, promoter, or seller of a medical product, in-  
14       cluding, but not limited to, third-party claims, cross-  
15       claims, counter-claims, or contribution claims, which  
16       are based upon the provision of, use of, or payment  
17       for (or the failure to provide, use, or pay for) health  
18       care services or medical products, regardless of the  
19       theory of liability on which the claim is based, or the  
20       number of plaintiffs, defendants, or other parties, or  
21       the number of causes of action.

22           (10) HEALTH CARE ORGANIZATION.—The term  
23       “health care organization” means any person or en-  
24       tity which is obligated to provide or pay for health  
25       benefits under any health plan, including any person

1 or entity acting under a contract or arrangement  
2 with a health care organization to provide or admin-  
3 ister any health benefit.

4 (11) HEALTH CARE PROVIDER.—The term  
5 “health care provider” means any person or entity  
6 required by State or Federal laws or regulations to  
7 be licensed, registered, or certified to provide health  
8 care services, and being either so licensed, reg-  
9 istered, or certified, or exempted from such require-  
10 ment by other statute or regulation.

11 (12) HEALTH CARE GOODS OR SERVICES.—The  
12 term “health care goods or services” means any  
13 goods or services provided by a health care organiza-  
14 tion, provider, or by any individual working under  
15 the supervision of a health care provider, that relates  
16 to the diagnosis, prevention, or treatment of any  
17 human disease or impairment, or the assessment of  
18 the health of human beings.

19 (13) MALICIOUS INTENT TO INJURE.—The  
20 term “malicious intent to injure” means inten-  
21 tionally causing or attempting to cause physical in-  
22 jury other than providing health care goods or serv-  
23 ices.

24 (14) MEDICAL PRODUCT.—The term “medical  
25 product” means a drug or device intended for hu-

1       mans, and the terms “drug” and “device” have the  
2       meanings given such terms in sections 201(g)(1) and  
3       201(h) of the Federal Food, Drug and Cosmetic Act  
4       (21 U.S.C. 321), respectively, including any compo-  
5       nent or raw material used therein, but excluding  
6       health care services.

7           (15) NONECONOMIC DAMAGES.—The term  
8       “noneconomic damages” means damages for phys-  
9       ical and emotional pain, suffering, inconvenience,  
10      physical impairment, mental anguish, disfigurement,  
11      loss of enjoyment of life, loss of society and compan-  
12      ionship, loss of consortium (other than loss of do-  
13      mestic service), hedonic damages, injury to reputa-  
14      tion, and all other nonpecuniary losses of any kind  
15      or nature.

16          (16) PUNITIVE DAMAGES.—The term “punitive  
17      damages” means damages awarded, for the purpose  
18      of punishment or deterrence, and not solely for com-  
19      pensatory purposes, against a health care provider,  
20      health care organization, or a manufacturer, dis-  
21      tributor, or supplier of a medical product. Punitive  
22      damages are neither economic nor noneconomic  
23      damages.

24          (17) RECOVERY.—The term “recovery” means  
25      the net sum recovered after deducting any disburse-

1       ments or costs incurred in connection with prosecu-  
2       tion or settlement of the claim, including all costs  
3       paid or advanced by any person. Costs of health care  
4       incurred by the plaintiff and the attorneys' office  
5       overhead costs or charges for legal services are not  
6       deductible disbursements or costs for such purpose.

7           (18) STATE.—The term “State” means each of  
8       the several States, the District of Columbia, the  
9       Commonwealth of Puerto Rico, the Virgin Islands,  
10      Guam, American Samoa, the Northern Mariana Is-  
11      lands, the Trust Territory of the Pacific Islands, and  
12      any other territory or possession of the United  
13      States, or any political subdivision thereof.

14   **SEC. 10. EFFECT ON OTHER LAWS.**

15      (a) VACCINE INJURY.—

16           (1) To the extent that title XXI of the Public  
17      Health Service Act establishes a Federal rule of law  
18      applicable to a civil action brought for a vaccine-re-  
19      lated injury or death—

20           (A) this Act does not affect the application  
21      of the rule of law to such an action; and

22           (B) any rule of law prescribed by this Act  
23      in conflict with a rule of law of such title XXI  
24      shall not apply to such action.

1           (2) If there is an aspect of a civil action  
2       brought for a vaccine-related injury or death to  
3       which a Federal rule of law under title XXI of the  
4       Public Health Service Act does not apply, then this  
5       Act or otherwise applicable law (as determined  
6       under this Act) will apply to such aspect of such ac-  
7       tion.

8       (b) OTHER FEDERAL LAW.—Except as provided in  
9       this section, nothing in this Act shall be deemed to affect  
10      any defense available to a defendant in a health care law-  
11      suit or action under any other provision of Federal law.

12   **SEC. 11. STATE FLEXIBILITY AND PROTECTION OF STATES'**  
13                   **RIGHTS.**

14      (a) HEALTH CARE LAWSUITS.—The provisions gov-  
15      erning health care lawsuits set forth in this Act preempt,  
16      subject to subsections (b) and (c), State law to the extent  
17      that State law prevents the application of any provisions  
18      of law established by or under this Act. The provisions  
19      governing health care lawsuits set forth in this Act super-  
20      sede chapter 171 of title 28, United States Code, to the  
21      extent that such chapter—

22           (1) provides for a greater amount of damages  
23           or contingent fees, a longer period in which a health  
24           care lawsuit may be commenced, or a reduced appli-

1       cability or scope of periodic payment of future dam-  
2       ages, than provided in this Act; or

3           (2) prohibits the introduction of evidence re-  
4       garding collateral source benefits, or mandates or  
5       permits subrogation or a lien on collateral source  
6       benefits.

7       (b) PROTECTION OF STATES' RIGHTS.—Any issue  
8       that is not governed by any provision of law established  
9       by or under this Act (including State standards of neg-  
10      ligence) shall be governed by otherwise applicable State  
11      or Federal law. This Act does not preempt or supersede  
12      any law that imposes greater protections (such as a short-  
13      er statute of limitations) for health care providers and  
14      health care organizations from liability, loss, or damages  
15      than those provided by this Act.

16      (c) STATE FLEXIBILITY.—No provision of this Act  
17      shall be construed to preempt—

18           (1) any State statutory limit (whether enacted  
19      before, on, or after the date of the enactment of this  
20      Act) on the amount of compensatory or punitive  
21      damages (or the total amount of damages) that may  
22      be awarded in a health care lawsuit, whether or not  
23      such State limit permits the recovery of a specific  
24      dollar amount of damages that is greater or lesser

1       than is provided for under this Act, notwithstanding  
2       section 4(a); or

3               (2) any defense available to a party in a health  
4       care lawsuit under any other provision of State or  
5       Federal law.

6   **SEC. 12. APPLICABILITY; EFFECTIVE DATE.**

7       This Act shall apply to any health care lawsuit  
8       brought in a Federal or State court, or subject to an alter-  
9       native dispute resolution system, that is initiated on or  
10      after the date of the enactment of this Act, except that  
11      any health care lawsuit arising from an injury occurring  
12      prior to the date of the enactment of this Act shall be  
13      governed by the applicable statute of limitations provisions  
14      in effect at the time the injury occurred.